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FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

Note by the Secretariat

1. By its resolution 827 (1993) of 25 May 1993, the Security Council, having considered the report of the Secretary-General prepared pursuant to paragraph 2 of Council resolution 808 (1993) of 22 February 1993 (S/25704 and Corr.1 and Add.1) and acting under Chapter VII of the Charter of the United Nations, approved that report and decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to that end to adopt the Statute of the International Tribunal annexed to the above-mentioned report.

2. Also by its resolution 827 (1993), the Security Council requested the Secretary-General to implement urgently the resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council. The Council also decided to remain actively seized of the matter.

3. On the basis of a request of the Secretary-General (see A/47/955), the General Assembly at its 104th plenary meeting on 28 May 1993 decided to include in the agenda of its forty-seventh session an item entitled "Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991" and to allocate it to the Fifth Committee.

4. In its report of 22 July 1993 (A/47/980), the Advisory Committee on Administrative and Budgetary Questions brought to the attention of the General Assembly the fact that it had considered a request from the Secretary-General on the financing of the International Tribunal. The Committee noted from article 32 of the Statute of the International Tribunal that its expenses "shall

be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations". The Committee also noted that the General Assembly had not yet taken a decision on the nature of financing of the International Tribunal, and had therefore requested the Secretary-General to submit a report on the requirements of the Tribunal to the General Assembly at its forty-eighth session, based on such decisions as the Assembly might take at its resumed forty-seventh session on the nature of the financing of the Tribunal.

5. In the light of the above, the General Assembly may wish to take a decision on the nature of the financing of the International Tribunal during its forty-seventh session.

6. Article 32 of the Statute of the International Tribunal, entitled "Expenses of the International Tribunal" (quoted in para. 4 above), was included in the report of the Secretary-General prepared pursuant to paragraph 2 of Security Council resolution 808 (1993) (S/25704 and Corr.1). By that resolution, the Secretary-General had been requested to submit a report on all aspects of this matter, including specific proposals and where appropriate, options for the effective and expeditious implementation of the decision to establish an international tribunal, taking into account suggestions put forward in this regard by Member States.

7. The Secretary-General had decided to include in his report a reference to the financial arrangements for the International Tribunal, in the light of the Council's request that he submit a report "on all aspects" of the matter, including specific proposals "for the effective and expeditious implementation" of the decision to establish an international tribunal. It had been quite explicitly indicated in the relevant Council consultations that the report was expected to cover the question of financial arrangements, and to omit from the report references to that important aspect of the matter would not have been in compliance with the Council's request. Moreover, leaving the matter open would not have facilitated the effective and expeditious implementation of the decision to establish an international tribunal. The Secretary-General had thus concluded that as the proposed Statute of the International Tribunal would be comprehensive and intended for effective and expeditious implementation, it would contain a specific provision on the expenses of the International Tribunal. That conclusion was reached without prejudice to the role of the General Assembly in the administrative and budgetary aspects of the question of establishing the International Tribunal, to which reference was made in the report (S/25704, para. 21).

8. As to the content of such a provision, the Secretary-General had considered various possible ways by which the International Tribunal could be financed: through voluntary contributions; as expenses of the Organization borne according to an ad hoc scale of assessments similar to scales of assessments drawn up for peace-keeping operations; as expenses of the Organization borne through the regular budget of the United Nations; or through any combination of the foregoing.

9. As experience shows, funding the International Tribunal through voluntary contributions, wholly or in part, would not, in the view of the

Secretary-General, lead to an effective and expeditious implementation of the decision to establish an international tribunal.

10. While the International Tribunal was established by the Security Council acting under Chapter VII as a measure to maintain and restore international peace and security, the Tribunal was not thereby to be equated to a peace-keeping operation. The International Tribunal is a subsidiary organ of the Security Council of a judicial nature, having as its mandate the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. Its mandate is not analogous to mandates given by the Security Council to peace-keeping operations which have particular political objectives and which often include military, police or security components.

11. In the light of the above, the Secretary-General decided to propose an article for inclusion in the Statute providing that the expenses of the International Tribunal shall be borne by the regular budget of the Organization.

12. The Security Council approved the approach of the Secretary-General outlined above and included the proposed article in the Statute adopted. In the view of the Secretary-General, within the context of preparing a comprehensive Statute of the International Tribunal to be implemented effectively and expeditiously, there was no legal bar to the Security Council reaching its own conclusions as to the appropriate financing of the International Tribunal and including a provision on the matter in the Statute which it adopted. Nevertheless, such conclusions are without prejudice to the authority of the General Assembly under the Charter to consider and approve the budget of the Organization and to apportion the expenses of the Organization among its Members.